

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

TARAND KINDRED,

Plaintiff,

v.

9:13-CV-1229 (BKS/RFT)

**J. RIVERS, *Correction Officer, Franklin
Correctional Facility,***

Defendant.

APPEARANCES:

Tarand Kindred
Jamestown, NY 14701
Plaintiff, pro se

Hon. Eric T. Schneiderman
New York State Attorney General
Colleen D. Galligan, Esq., Assistant Attorney General
The Capitol
Albany, NY 12224
For Defendants

Hon. Brenda K. Sannes, United States District Court Judge

DECISION AND ORDER

On October 2, 2013, plaintiff Tarand Kindred, a former New York State inmate, commenced this proceeding under 42 U.S.C. § 1983, alleging that his constitutional rights were violated while he was incarcerated at the Franklin Correctional Facility. (Dkt. No. 1).

Defendant filed a motion to dismiss for lack of prosecution on February 18, 2015, after defendant had twice unsuccessfully attempted to take plaintiff's deposition: plaintiff had been released from custody shortly before the first deposition was scheduled and plaintiff failed to

appear for the second deposition that was scheduled. (Dkt. No. 22). Plaintiff failed to respond to the motion to dismiss.

On August 26, 2015, United States Magistrate Judge Randolph F. Treece issued a Report-Recommendation and Order, recommending that defendant's motion to dismiss for lack of prosecution be granted, and this action be dismissed. (Dkt. No. 25). Magistrate Judge Treece advised the parties that they had fourteen days to file written objections to the report and that the failure to object within fourteen days would preclude appellate review. (Dkt. No. 25, p. 7). A copy of the Report-Recommendation and Order was mailed to plaintiff via certified and regular mail. (Dkt. No. 25). On September 8, 2015, the Court received a certified return receipt signed in plaintiff's name and dated September 4, 2015. (Dkt. No. 26). No objections to the Report-Recommendation and Order have been filed. (*Id.*).

Since no objections to the Report-Recommendation and Order have been filed, and the time for filing objections has expired, the Court has reviewed the Report-Recommendation and Order for clear error. *Petersen v. Astrue*, 2F. Supp. 3d 223, 228-29 (N.D.N.Y.2012); Fed. R.Civ.P. 72(b) advisory committee's note to the 1983 addition. Under this standard, "the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." *Id.* Having reviewed the Report-Recommendation and Order, and having found no clear error, it is hereby:

ORDERED that the Report-Recommendation and Order (Dkt. No. 25) is **ADOPTED** in its entirety for the reasons stated therein; and it is further

ORDERED that defendant's Motion to Dismiss for Lack of Prosecution (Dkt. No. 22) is **GRANTED**; and it is further

ORDERED that this case is dismissed and the Clerk of the Court is directed to close the case; and it is further

ORDERED that the Clerk of the Court serve copies of this Decision and Order on the parties.

IT IS SO ORDERED.

Dated: September 21, 2015

A handwritten signature in black ink, reading "Brenda K. Sannes", written over a horizontal line.

Brenda K. Sannes
U.S. District Judge